

To: Members of the Insurance and Real Estate Committee

From: Richard Hogan, Legislative and Regulatory Counsel – CATIC

Re: Raised Bill ~~6510~~ - AN ACT CONCERNING THE REGULATION OF
PRIVATE TRANSFER FEES AND THE VALUATION OF REAL ESTATE

Private Transfer Fees are a new and controversial financial scheme in which, developers, in consultation with Wall Street advisers, are attempting to add language to home purchase contracts requiring that a percentage of the sales price be paid to the original corporate owner of a property every time the property is sold, typically for 99 years. The fees, which include a securitization element, infringe on property rights, and require homeowners to pay a large fee to sell their homes.

These Private Transfer Fees may:

- Increase the costs of homeownership and reduce liquidity in both primary and secondary mortgage markets;
- Limit property transfers or render them legally uncertain;
- Detract from the stability of the secondary mortgage market if such fees will be securitized;
- Expose lenders, title companies and secondary market participants to risks from unknown potential liens and title defects;
- Reduce transparency for consumers because Private Transfer Fees often are not disclosed by sellers and are difficult to discover through customary title searches.

At the state level, 19 states have bans or restrictions in place on Private Transfer Fees. Legislation is pending in at least six other states to ban the fees.

Last month, the Federal Housing Finance Agency (FHFA) proposed a rule that would limit Fannie Mae, Freddie Mac and the Federal Home Loan Bank from investing in mortgages encumbered by Private Transfer Fee covenants. The FHFA took an important step by submitting a rule that limits the spread of this predatory scheme, which adversely impacts the stability of the housing and mortgage market. The proposed rule excludes fees paid to homeowner associations, condominiums, cooperatives and certain tax-exempt organizations that use Private Transfer Fees proceeds to benefit the property.

One small thing of note, Raised Bill 6510 states in Section 1. (b), that “This subsection shall not be the sole basis for validation of a private transfer fee obligation imposed prior to October 1, 2011. I would ask that this section be amended to state that “Nothing in this section shall imply that a transfer fee covenant recorded prior to the effective date of this section is valid or enforceable.”